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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052197
Party	Defendant Supercar Collectibles Limited
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 CLASSIC CAMARO, INC., a
 7 California corporation, d/b/a
 CLASSIC INDUSTRIES
 8
 9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF ORANGE
 12

13 CLASSIC CAMARO, INC., a California)
 corporation, d/b/a CLASSIC)
 14 INDUSTRIES)

15 Plaintiff,)

16 v.)

17 1968 YENKO COPO CAMARO)
 SWEEPSTAKES, a California general)
 18 partnership, DAVID G. HETH, and)
 DOES 1-50, inclusive,)
 19)

20 Defendants.)
 _____)

CASE NO. 778892

ASSIGNED FOR ALL PURPOSES TO
 JUDGE RICHARD W. LUSEBRINK
 DEPARTMENT 21

TRIAL BRIEF

TRIAL DATE: March 30, 1998
 TIME: 9:00 A.M.
 DEPT.: 21

21
 22 1.

23 SUMMARY OF CASE

24 This is an action for a partnership dissolution and accounting
 25 brought by Plaintiff, Classic Camaro, Inc. ("Classic") against the
 26 other joint venturer, Defendant David G. Heth ("Heth") and the nominal
 27 Defendant joint venture, 1968 YENKO COPO Camaro Sweepstakes (the
 28 "Joint Venture").

1 In a nutshell, Classic and Heth formed the Joint Venture to
2 conduct a promotional sweepstakes to sell phone cards and posters
3 through Classic's extensive marketing and distribution network. The
4 grand prize of the sweepstakes was a unique 1968 Chevy Camaro (the
5 "Camaro").

6 Heth agreed to contribute the Camaro to the Joint Venture;
7 Classic agreed to promote the sweepstakes at its expense by
8 advertising the promotion on the front page of its 547 page catalog
9 which is distributed nationally, as well as in other media, and to
10 provide Classic's marketing and administrative staff to process
11 orders, collect funds and distribute merchandise. Heth and Classic
12 agreed that the proceeds from the sale of the phone cards and posters
13 would be split 40 percent to Classic and 60 percent to Heth.

14 Shortly after Heth and Classic reduced their understanding to
15 writing, Heth surreptitiously transferred the pink slip to the Camaro
16 to a third party as collateral for a \$150,000.00 loan. Heth concealed
17 this fact from Classic for nearly six months after the funds were
18 borrowed and until such time that Classic had distributed more than
19 200,000 color catalogs to its customers promoting the sweepstakes and
20 more than 5,000 sweepstakes entries had been received. Heth then told
21 Classic that if Classic wanted to deliver the grand prize for the
22 sweepstakes, it would have to pay Heth \$150,000.00 to get the pink
23 slip to the Camaro.

24 Classic refused to pay Heth and threatened to terminate the
25 sweepstakes and return all the merchandise to sweepstakes
26 participants.

27 Heth then turned over some posters and the sweepstakes entry
28 records and absconded with approximately 5,000 prepaid phone cards.

1 Classic was able to locate the secured creditor holding the pink slip
2 to the Camaro, and paid \$90,000.00 to acquire the creditor's interest
3 in the Camaro. Classic then continued with the sweepstakes, a drawing
4 was held and a grand prize winner was selected.

5 Classic negotiated with the grand prize winner to pay the winner
6 \$50,000.00 cash in lieu of delivering the Camaro.

7 Classic advanced the \$50,000.00 to pay the grand prize winner,
8 as well as paid other expenses for phone cards that should have been
9 paid by Heth. When Classic learned of Heth's deception, Classic filed
10 this action to dissolve the partnership and for an accounting.

11 All of the Joint Venture's assets have been liquidated, and all
12 of its creditors have been paid, with the exception of Classic, which
13 has advanced its own funds to cover the obligations created by Heth's
14 failure to honor his commitments.

15 2.

16 **FACTS CLASSIC CONTENDS THE EVIDENCE WILL SHOW**

17 The Plaintiff will introduce testimony from Classic's President,
18 Jeff Leonard ("Leonard"), an employee of Classic, Mike Pientka
19 ("Pientka"), Classic's General Manager, Ron Fox ("Fox"), and a
20 licensee of Heth, Larry Weiner ("Weiner"). Leonard, Pientka, and
21 Weiner will testify on the subject of the negotiations leading up to
22 the creation of the Joint Venture, as well as the conduct of the
23 sweepstakes promotion through the final drawing and selection of the
24 grand prize winner. Fox and Jeff Preston, a computer consultant, will
25 authenticate the business records and provide testimony concerning the
26 income and expense of the sweepstakes operations from start to finish.

27 The testimony of these witnesses will confirm in greater detail
28 the facts outlined above, and will also controvert anticipated

1 testimony from Heth to the effect that there was a guarantee or
2 representation by Classic that sales from the promotional sweepstakes
3 would meet certain minimum levels. Weiner, who represented Heth's
4 interest in much of the negotiations, will testify that although
5 everyone was optimistic, there were no guarantees of minimum sales in
6 connection with the sweepstakes promotion.

7 The financial bottom line is as follows:

9	Total Joint Venture Receipts:	\$ 49,894.61
10	Heth's 60% Share:	29,936.77
11	Adjustments to Heth's Share:	
12	Payments to Heth	(17,022.63)
13	Grand Prize ¹	(50,000.00)
14	Phone Card Costs ²	(6,363.00)
15	1/2 Drawing Cost ³	(2,500.00)
16	Due from Heth:	<u>\$45,948.86</u>

17 3.

18 **APPLICABLE LAW**

19 Joint ventures are ordinarily considered a form of partnership
20 and are governed by partnership principles, including the Uniform
21 Partnership Act.⁴ Partnerships formed before January 1, 1997, as was
22 this Joint Venture, are governed by the old Uniform Partnership Act

24 ¹ Classic Negotiated and paid from its own funds \$50,000.00 to the grand
25 prize winner. The grand prize was supposed to be contributed by Heth.

26 ² Heth agreed to furnish the cards; when he did not, Classic paid for them.

27 ³ The \$5,000.00 cost retaining an independent CPA to validate the drawing
and sweepstakes should be shared by the Joint Venturers.

28 ⁴ *Zeibak v. Nasser* (1938) 12 Cal.2d 1,12, 82 P.2d 375

1 (Corporations Code sections 15001-15058).⁵

2 Corporations Code section 15032 entitles plaintiff to a decree
3 of dissolution because Heth's conduct has prejudicially affected the
4 carrying on of the partnership business, and he willfully and
5 persistently breached the partnership agreement by failing to make the
6 required contributions or cooperating with the conduct of the
7 sweepstakes. Plaintiff is also entitled to an accounting in
8 connection with the decree of dissolution under Corporations Code
9 section 150043.

10 Corporations Code section 15039, as well as applicable case law,
11 gives this Court the power, as part of the dissolution and accounting
12 proceeding, to place the plaintiff in the place of all creditors of
13 the partnership for any payments made by the plaintiff in respect to
14 the partnership liabilities, and to be indemnified by Heth for the
15 debts and liabilities of the partnership caused by his fraud or
16 misrepresentation.⁶

17 In this case, Heth's failure to deliver the principal asset to
18 the Joint Venture through his fraudulent and deceptive conduct
19 justifies Classic in rescinding the Joint Venture acting as a receiver
20 to wind up the Joint Venture's affairs and pay off the Joint Venture
21 creditors from its own funds. The Joint Venture has now liquidated
22 all its assets and paid all its debts; Classic is entitled to a
23 monetary judgment against Heth in the amount of \$45,948.00, as shown
24 in the accounting.

25 4.

26 ⁵ Corporations Code section 16111(a).

27 ⁶ Corporations Code section 15039(b,c), and *Prince v. Harting* (1960) 177
28 Cal.App.2d 720; 2 Cal.Rptr.545.

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CONCLUSION

The evidence will show that Heth failed to honor his commitments under the Joint Venture agreement, diverted Joint Venture assets by borrowing against and encumbering Joint Venture assets, and that Classic in essence served as a receiver to wind down the Joint Venture affairs, pay off its creditors with Classic's own funds, and dissolve the Joint Venture.

The testimony of Fox and the business records to be presented will show that Classic has paid more than its fair share of operating costs of the partnership, as well as paid from its own pocket amounts that should have been contributed by Heth. The dissolution and accounting should be complete upon the presentation of the evidence, and Classic should be entitled to a monetary judgment against Heth.

Respectfully submitted,
VERANO & VERANO,
a Professional Law Corporation

Dated: _____, 1998

By: _____
HUGH T. VERANO, JR.,
Attorneys for Plaintiff,
CLASSIC CAMARO, INC., a California
corporation, d/b/a/ CLASSIC
INDUSTRIES